

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1-4, 6-11, 13-19, 21, and 22 are presently pending in this case. Claims 1, 2, 6, 8, 9, 13, and 15-17 are amended, Claims 5, 12, and 20 are canceled without prejudice or disclaimer, and new Claims 21 and 22 by the present amendment. As amended Claims 1, 2, 6, 8, 9, 13, and 15-17 and new Claims 21 and 22 are supported by the original disclosure,¹ no new matter is added.

In the outstanding Official Action, Claims 1-20 were rejected under 35 U.S.C. §103(a) as unpatentable over Ravi et al. (U.S. Patent No. 6,292,834, hereinafter “Ravi”) in view of Frerichs et al. (U.S. Patent Application Publication No. 20020120747, hereinafter “Frerichs”) and further in view of Ka Ming et al. (U.S. Patent No. 6,993,283, hereinafter “Ka Ming”).

The outstanding rejection is respectfully traversed.

Amended Claim 1 recites in part:

memory means for temporarily storing the compressed data downloaded;
data expanding means for expanding the compressed data stored in the memory means;
reproducing means for performing streaming reproduction on data expanded by the data expanding means *as soon as an amount of data stored in the memory means exceeds a first threshold value*;
detecting means for detecting a data size of the compressed data temporarily stored in the memory means and a compression rate of the compressed data downloaded; and
control means for changing the first threshold value and a second threshold value for the data size of the compressed data stored in the memory means based on the compression rate detected by the detecting means, and reading the compressed data from the memory means when the data size of the compressed data temporarily stored in the memory means exceeds the first threshold value and transferring the

¹See, e.g., the specification at paragraphs 82-84 of the publication.

compressed data to the data expanding means, said control means temporarily stopping reproduction when the compressed data is determined as being less than or equal to the first threshold value until the compressed data is determined as being greater than the first threshold value, ***said control means temporarily stopping downloading the compressed data from the network when the compressed data in the memory means exceeds a second threshold value until the compressed data is determined as being less than the second threshold value, the second threshold value being higher than the first threshold value.***

Thus, the claimed invention begins reproducing at a lower first threshold value to allow a more natural sound, rather than having a long pause before the beginning of reproduction. Further, the claimed invention then sets a higher second threshold value to provide a larger buffer to avoid interruption in downloading data. Finally, the claimed invention sets both of these threshold values based on a detected compression rate.

The outstanding Office Action conceded that Ravi does not teach or suggest “reproducing means” and “control means” as recited in previous Claim 1, and cited Frerichs as describing these features, citing the low watermark of Frerichs as “a threshold value.”² Frerichs describes in paragraph 20 that reproduction begins as soon as the buffer is filled to the low water mark. The outstanding Office Action further asserts that the device of Frerichs would inherently temporarily stop reproduction if the buffer content falls below the low water mark. Initially, it is respectfully noted that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). In the present

²See the outstanding Office Action at pages 12-14.

case, no basis has been provided proving that the device of Frerichs would inherently temporarily stop reproduction if the buffer content falls below the low water mark, and it is respectfully submitted that such a device does not *necessarily* need to include this feature to operate properly. Accordingly, it is respectfully submitted that Frerichs, and thus the proposed combination, does not teach or suggest this feature.

Further, none of the references appear to describe temporarily stopping *downloading the compressed data from the network* when the compressed data in a memory exceeds a *second* threshold value until the compressed data is determined as being less than the second threshold value, as recited in amended Claim 1. It is respectfully noted that the play buffer size of Frerichs cannot be interpreted as “a second threshold value” as recited in Claim 1 because Frerichs does not describe that the play buffer size is changed based on a compression rate. Frerichs only describes that the low water mark is modified based on the bit rate.

Moreover, Ravi describes changing the bandwidth based on multiple thresholds, but also does not describe temporarily stopping *downloading the compressed data from the network* when the compressed data in a memory exceeds a *second* threshold value until the compressed data is determined as being less than the second threshold value, as recited in amended Claim 1. In fact, column 6, lines 44-47 of Ravi provide a set of *nonzero* exemplary bandwidths. Finally, Ka Ming describes different compression rates, but does not describe changing a threshold value based on a compression rate.

Thus, as none of the cited references teach or suggest “changing the first threshold value *and* a second threshold value for the data size of the compressed data stored in the memory means *based on the compression rate*” and “said control means *temporarily stopping downloading the compressed data* from the network when the compressed data in the memory means exceeds a second threshold value until the compressed data is determined

as being less than the second threshold value, the second threshold value being higher than the first threshold value,” the proposed combination cannot teach or suggest “control means” as defined in amended Claim 1. Consequently, Claim 1 (and Claims 2-4, 6, and 7 dependent therefrom) is patentable over Ravi in view of Frerichs and further in view of Ka Ming.

Amended Claims 8 and 15 recite in part:

changing the first threshold value *and* a second threshold value for the data size of the compressed data *based on the compression rate* detected in the detecting;

...
temporarily stopping downloading the compressed data from the network when the compressed data in the memory means exceeds a second threshold value until the compressed data is determined as being less than the second threshold value, the second threshold value being higher than the first threshold value.

As noted above, Frerichs only describes changing a low water mark, which only affects when reproduction is started. Frerichs does not describe that the play buffer size is changed based on a compression rate. Ravi describes changing the bandwidth based on multiple thresholds, but also does not describe temporarily stopping downloading the compressed data from the network. Finally, Ka Ming describes different compression rates, but does not describe changing a threshold value based on a compression rate. Consequently, as the proposed combination cannot teach or suggest “changing the first threshold value and a second threshold value” and “temporarily stopping downloading” as defined in Claims 8 and 15, Claims 8 and 15 (and Claims 9-11, 13, and 14 dependent therefrom) are also patentable over Ravi in view of Frerichs and further in view of Ka Ming.

Amended Claim 16 recites in part:

a controller configured to *change the first threshold value and a second threshold value for the data size of the compressed data stored in the memory based on the compression rate detected by the detector*, to read the compressed data from the memory when the data size of the compressed data temporarily stored in the memory exceeds the second threshold value, to transfer the compressed data to the

data expanding unit, and to temporarily stop reproduction when the compressed data is determined as being less than or equal to the second threshold value until the compressed data is determined as being greater than the second threshold value, said controller configured to ***temporarily stop downloading the compressed data from the network when the compressed data in the memory exceeds a second threshold value until the compressed data is determined as being less than the second threshold value***, the second threshold value being higher than the first threshold value.

As noted above, Frerichs only describes a device that changes a low water mark, which only affects when reproduction is started. Frerichs does not describe that the described device changes the play buffer size based on a compression rate. Ravi describes a device that changes a bandwidth based on multiple thresholds, but also does not describe that the device temporarily stops downloading the compressed data from the network. Finally, Ka Ming describes different compression rates, but does not describe changing a threshold value based on a compression rate. Thus, it is respectfully submitted that the proposed combination cannot teach or suggest “a controller” as defined in Claim 16. Consequently, Claim 16 (and Claims 17-19, 21, and 22 dependent therefrom) is also patentable over the cited references.

New Claims 21 and 22 are supported at least by the specification at paragraphs 80-82 of the publication. New Claims 21 and 22 are dependent on Claim 16, and thus are believed to be patentable for at least the reasons described above with respect to Claim 16. In addition, Claims 21 and 22 recite subject matter that further patentably defines over the cited references. Consequently, Claims 21 and 22 are also allowable.

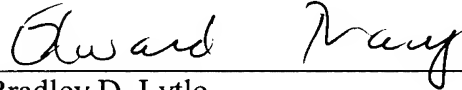
Application No. 10/565,965
Reply to Office Action of February 4, 2009

Accordingly, the pending claims are believed to be in condition for formal allowance.

An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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A handwritten signature in cursive script, appearing to read "Bradley D. Lytle", is written over a horizontal line.

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